

ROKOSCH

GRANDSTAFF

THOMPSON

CHILCOTT

DRISCOLL

PLETTENBERG (Clerk & Recorder)

Date.....September 13, 2007

Members Present.....Commissioner Jim Rokosch,
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Minutes: Beth Farwell

Commissioner Thompson attended a Human Resource meeting in Superior.

The Board met to decide to allow reroute of 9-1-1 calls from Granite County to Ravalli
County for a period of time. Present was 9-1-1 Director Joanna Hamilton.

Joanna requested the Board allow the rerouting of 9-1-1 calls from Granite County in the
event of an emergency. Commissioner Chilcott recommended a MOU (Memorandum of
Understanding) between Granite and Ravalli County. Commissioner Grandstaff
suggested obtaining volume of calls prior to the MOU.

**Commissioner Chilcott made a motion to enter into a discussion or MOU with
Granite County in order to provide backup services to their 9-1-1 Center.
Commissioner Driscoll seconded the motion, all voted 'aye'.**

The Board met for a public hearing for Hamilton Heights Block 13 Lots A-D AP Major
Subdivision preliminary plat approval. Present were Special Projects Planner Jen De
Groot.

Commissioner Rokosch opened the public hearing.

Commissioner Rokosch called for any conflicts of interest, hearing none. He then
requested the Planning Staff Report.

Jen presented the Planning Staff Report as follows:

**HAMILTON HEIGHTS BLOCK 13, LOTS A-D, AP
TWENTY-LOT MAJOR SUBDIVISION**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS

CASE PLANNER: Jennifer De Groot

**REVIEWED/
APPROVED BY:** Renee Van Hoven

**PUBLIC HEARINGS/
MEETINGS:** BCC Public Hearing: 9:00 a.m. September 13, 2007
Deadline for BCC action (60-working days): October 23, 2007

SUBDIVIDERS: Marlin and Joshua Powell
PO Box 123
Corvallis, MT 59828

REPRESENTATIVE: Shepherd Surveying
320 Adirondac
Hamilton, MT 59840

LOCATION OF REQUEST: The property is located southeast of Corvallis
off Hamilton Heights Road (See Map 1)



Map 1: Location Map

(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

A portion of the NE ¼ Section 15, T6N, R20W,
P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was determined complete on July 27, 2007. Agencies were notified of the subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 and A-7 of the staff report.

LEGAL NOTIFICATION:

A legal advertisement was published in the *Ravalli Republic* on Friday, August 17, 2007. Notice of the project was posted on the property and adjacent property owners were notified by certified mail postmarked August 3, 2007. One public comment has been received and is attached as Exhibit B-1.

**PLANNING BOARD
REVIEW:**

On May 30, 2007, the Planning Board Subdivision Screening Committee determined that full Planning Board Review is not necessary (Exhibit B-2, Subdivision Screening Committee Minutes dated May 30, 2007). The applicant requested that the full Planning Board review the subdivision proposal and provide a recommendation to the BCC. At the August 15, 2007, Planning Board meeting, the Planning Board did not have time to review this subdivision and offered to reschedule the review for the next meeting. The applicant then requested that the subdivision proposal be brought directly to the BCC, bypassing full Planning Board review.

**APPLICABLE
REGULATIONS:**

The proposal is being reviewed under the Ravalli County Subdivision Regulations (RCSR), as amended May 24, 2007.

**DEVELOPMENT
PATTERN:**

Subject property	Vacant Rural
North	Agricultural Rural
South	Residential Rural
East	Residential Rural
West	Vacant Rural

INTRODUCTION

The Hamilton Heights, Block 13, Lots A-D, AP major subdivision is a 20-lot subdivision of 42.24 acres located approximately 4.5 miles southeast of the community of Corvallis. There is an area of steep slopes (greater than 25%) on the southern end of the subject property. An unnamed creek traverses the northern section of the parcel and the applicant has proposed a 100-foot wide no-build/alteration zone along the creek.

The property is accessed via Eastside Highway, Hamilton Heights Road, and an internal subdivision loop road. Existing water rights with the property are distributed by the Bitter Root Irrigation District and are proposed to be split between each lot. No variances are being requested with this subdivision.

RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS SEPTEMBER 13, 2007

HAMILTON HEIGHTS BLOCK 13, LOTS A-D, AP SUBDIVISION TWENTY-LOT MAJOR SUBDIVISION

RECOMMENDED MOTION

That the Hamilton Heights, Block 13, Lots A-D, AP Major Subdivision be ***approved***, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report. *(Staff Note: The BCC should determine if cash-in-lieu will be accepted to meet the parkland dedication requirement as part of the motion. Also, the contribution to the Sheriff's Office needs to be negotiated with the applicants.)*

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

Limitation of Access onto a Public Road. A "no-ingress/egress" restriction exists along southern half of the internal subdivision road as it traverses through Lots 2 through 5 and along the Hamilton Heights Road frontage of this subdivision, excepting for the approved approach. All lots within this subdivision must use this approved approach. This limitation of access may

be lifted or amended only with the approval of the Board of County Commissioners. *(Effects on Local Services and Public Health and Safety)*

Notification of Road Maintenance Agreement. The internal subdivision road is not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A Road Maintenance Agreement for this road was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. *(Effects on Local Services)*

Notification of Irrigation Facilities and Easements. Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The filed subdivision plat shows the irrigation easements on the property. The Bitter Root Irrigation District must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders and those acting with the approval of the Bitter Root Ditches Irrigation District have the right to use the easements to maintain the ditches. Please contact the Bitter Root Irrigation District, 1182 Lazy J Lane, Corvallis, Montana, 59828, 961-1182 for more information. *(Effects on Agricultural Water User Facilities)*

Notification of No-Build/Alteration Zone. Within this subdivision there are no-build/alteration zones, as shown on the plat, to restrict building in areas with steep slopes and around an unnamed creek. No new structure, with the exception of fences, may be constructed in these areas. No new utilities, with the exception of wells, may be constructed in these areas. No fill may be placed in this area and the vegetation shall be retained in its natural condition. Roads, trails, and utility crossings through this area are not permitted. [The subdividers shall include a reduced copy of the final plat showing the no-build/alteration zones as an exhibit to this document.] *(Effects on Natural Environment, Wildlife & Wildlife Habitat, Public Health & Safety)*

Notification of "Very Limited" Soils. Within this subdivision there are areas of the property identified by the Natural Resources Conservation Service (NRCS) as potentially having soils rated as "very limited" for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat. Descriptions of the severe soils in question are included as exhibits to this document [the subdividers shall include the exhibits as attachments]. *(Effects on Public Health & Safety)*

Notification of Proximity to Unnamed Intermittent Creek. Within this subdivision there is an unnamed intermittent creek. There is an inherent

hazard associated with creeks, due to potential soil erosion, flooding, and movement of the creek channel. (*Effects on Public Health & Safety*)

2. Protective covenants for this subdivision shall be filed with the final plat that include the following provisions:

Waiver of Protest to Creation of RSID/SID. Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services*)

Living with Wildlife. (See Exhibit A-1 for required provisions.) (*Effects on Agriculture and Wildlife & Wildlife Habitat*)

Riparian Covenants. Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. The goal of the "no build/alteration zone" along the intermittent creek traversing the subdivision is to help preserve the water quality and functionality of this drainage area, protect and enhance potential riparian areas, and protect property from eroding banks and possible flooding. (*Effects on Natural Environment and Wildlife and Wildlife Habitat*)

A 100-foot no-build/alteration zone is centered on the unnamed creek/natural drainage that traverses Lots 8 through 11 of the subdivision. The following covenants apply to the no-build/alteration zone:

- a. No new building or alteration is allowed in the zone.
- b. Only non-motorized access is allowed (except for certain maintenance needs such as weed spraying).
- c. Do not cut or remove live or dead vegetation, particularly shrubs and trees from the no-build/alteration zone. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
- d. Do not plant lawns or crops in the zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
- e. If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
- f. In summary, allow the riparian areas to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.
- g. These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. *(Effects on Natural Environment and Wildlife & Wildlife Habitat)*

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. *(Effects on Public Health & Safety)*

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. *(Effects on Agriculture and Natural Environment)*

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code which requires lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. *(Effects on Local Services and Public Health & Safety)*

Access Requirements for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information. *(Effects on Local Services and Public Health & Safety)*

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*
4. The subdividers shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Public Health & Safety)*
5. Prior to final plat approval, the subdividers shall provide a letter from the Corvallis Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services and Public Health & Safety)*
6. The subdividers shall submit a letter or receipt from the Corvallis School District stating that they have received a \$250-per-lot contribution prior to final plat approval. Alternatively, the subdividers may place an encumbrance on the final plat stating that the \$250 contribution shall be made to the School District upon first conveyance, including lease or rent, of each lot. *(Effects on Local Services)*
7. The final plat shall show a no-ingress/egress zone along the Hamilton Heights Road frontage of the subdivision, excepting the approach for the internal subdivision road, as approved by the Road and Bridge Department. A no-ingress/egress zone shall also be shown along both sides of the internal subdivision road as it traverses through the southern half of Lots 2, 3, 4, and 5. *(Effects on Local Services and Public Health and Safety)*
8. Existing and proposed irrigation easements shall be shown on the final plat to provide irrigation water to each lot within the subdivision. *(Effects on Agricultural Water User Facilities)*
9. The internal subdivision road shall be labeled as a "public road and utility easement" on the final plat. *(Effects on Local Services)*
10. A stop sign and road name sign shall be installed at the intersection of the internal subdivision road and Hamilton Heights Road prior to final plat approval. *(Effects on Local Services and Public Health & Safety)*

11. The applicants shall provide evidence that plans for a Collection Box Unit (CBU), including location of the box and specifications, have been approved by the local post office prior to final plat approval. *(Effects on Local Services)*
12. A 100-foot wide no-build/alteration zone centered on the unnamed creek traversing the northern edge of the property shall be shown on the final plat, as shown on the preliminary plat. *(Effects on the Natural Environment, Wildlife & Wildlife Habitat, Public Health & Safety)*
13. A no-build/alteration zone on slopes greater than 25% shall be shown on the final plat, excepting the proposed road easement for Prestige Way. *(Effects on Public Health & Safety)*
14. The subdivider shall submit an (amount)-per-lot contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plat approval. *(Effects on Local Services)*
15. To mitigate impacts on public health and safety, the applicant shall provide evidence that the trees located in the Hamilton Heights Road easement limiting sight distance visibility have been removed prior to final plat approval. The final approach permit signed by the Road and Bridge Department should indicate that the trees were removed. *(Effects on Public Health and Safety)*

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it is established by credible evidence that the proposed subdivision meets the following requirements:

A. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. The preliminary plat indicates the location of proposed and existing utility easements.
2. Section 3-4-4(a)(ii) of the RCSR requires that the existing and proposed utility easements are shown on the final plat.

Conclusion of Law

The proposed subdivision application provides for utility easements.

B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.

Findings of Fact

1. The subject property is accessed by Hamilton Heights Road and the internal subdivision road (Prestige Way).
2. Hamilton Heights Road is listed as a County-maintained road in Exhibit A of the RCSR.
3. The applicant is proposing a 60-foot wide public road and utility easement for Prestige Way to serve the lots within the subdivision. Section 3-4-4(a)(ii) of the RCSR requires that public road and utility easements be shown on the final plat.
4. The applicant is proposing to improve the internal road to meet County standards. The Ravalli County Road and Bridge Department has issued preliminary approval of the road plans (Exhibit A-2). Section 3-4-4 requires final road plans, road certifications, and final approval from the Road Department that the roads were constructed to meet County standards prior to final plat approval.

Conclusions of Law

1. Legal and physical access is provided on Hamilton Heights Road.
2. With the final plat requirements, legal and physical access will be provided on Prestige Way.

C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section 3-4-2 of the RCSR.

Findings of Fact

1. The applicant is proposing to construct the internal road within the subdivision to meet County standards.
2. A road name sign and stop sign are required to be installed at the intersection of Prestige Way and Hamilton Heights Road.
3. Irrigation infrastructure shall be installed to allow for delivery to each lot within the subdivision, as approved by BRID.
4. Section 3-4-4(a)(xxvi) requires that the applicant submit evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdividers prior to final plat approval.

Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.

Findings of Fact

1. The application states that the property has 37.4 irrigated acres from the Bitter Root Irrigation District (BRID).
2. A letter from BRID approves the allocation of 1.5 to 2.4 irrigated acres to each lot within the subdivision.

Conclusion of Law

This requirement has been met.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. According to the application and the preliminary plat, there is an existing 15-foot wide irrigation easement centered on a ditch that traverses Lots 1 through 6 and Lot 14 of the subdivision from east to west.
2. The applicant is proposing to use the existing 15-foot wide irrigation easement to serve Lots 1 through 6 and Lot 14, a proposed 10-foot easement is proposed to serve Lots 15 through 20, and an irrigation easement along the internal road is proposed to serve Lots 8 through 13 and Lot 17. BRID has approved the irrigation plan.
3. Section 3-4-4(a)(ii)(V) requires that irrigation easements be shown on the final plat.
4. The placement of structures or the planting of vegetation other than grass within the ditch easement is prohibited in 76-3-504(1)(k) MCA, without the written permission of the ditch owner (Bitter Root Irrigation District). To meet this requirement, the applicant shall place a notification in the Notifications Document that permission from the Bitter Root Irrigation District is required for any alterations within the irrigation easement.
(Condition 1)

Conclusion of Law

With the requirements of final plat approval and a condition requiring a notification that permission from the Bitter Root Irrigation District is required for any alterations within the easement, this requirement will be met.

- F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.**

Findings of Fact

1. The application states that 2.11 acres are required to meet the parkland dedication requirement.
2. The applicant is proposing to give cash-in-lieu of parkland.

3. Because of the remote location and topographical difficulties at the subdivision site, the Park Board recommends cash-in-lieu of parkland dedication. (Exhibit A-3)

Conclusion of Law

The applicant has proposed cash-in-lieu of parkland that meets the requirements.

G. Overall Findings and Conclusions on Prerequisite Requirements

Finding of Fact

The application and conditions/requirements of final plat approval show that the prerequisite requirements have been met.

Conclusion of Law

With the conditions and requirements of final plat approval, there is credible evidence that the subdivision application meets the prerequisite requirements.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

A. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. The Ravalli County Planning Department has reviewed this proposal in compliance with the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations. With the conditions and requirements of final plat approval, the application will meet the design standards in Chapter 5.

Conclusions of Law

1. With the conditions and requirements of final plat approval, the preliminary plat and subdivision application meet all applicable standards required in the RCSR.
2. The procedures for the application and review of this proposed subdivision have been followed.

B. Applicable zoning regulations.

Findings of Fact

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2038). The application complies with Resolution 2038.
2. The property is not within one of the voluntary zoning districts in Ravalli County.

Conclusion of Law

This proposal complies with existing zoning regulations.

C. Existing covenants and/or deed restrictions.

Finding of Fact

There are no existing covenants on the property.

Conclusion of Law

There are no covenants that apply to this property.

D. Other applicable regulations.

Findings of Fact

1. Following are applicable regulations:
 - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
 - Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
 - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
 - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
 - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)
2. The applicants were made aware of the applicable regulations at the updated pre-application conference held on February 7, 2007.

Conclusion of Law

The application appears to meet all of the applicable regulations.

E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed major subdivision on 42.24 acres will result in 20 lots that average 2.11 acres. The property is located approximately 4.5 miles southeast of the community of Corvallis off Eastside Highway and Hamilton Heights Road.

2. The property is located in an area of residential and agricultural uses. To mitigate impacts on agriculture, a notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (*Conditions 1 and 2*)
3. According to the application, the property has been used for agriculture in the past, but is currently being used for horse pasture. The landscape appears to be altered due to the presence of horses.
4. Based on the noxious weed evaluation form submitted with the preliminary plat application, the property has about one acre of Hoary Alyssum, scattered Spotted Knapweed, Canada Thistle, and about four acres of Tall Buttercup. Section 3-4-4(a)(xi) requires the applicant to submit a Ground Disturbance and Noxious Weed Management Plan approved the Ravalli County Weed District. To further mitigate impacts on surrounding agriculture, a provision in the covenants shall require future lot owners to control weeds in conjunction with the filed plan. (*Condition 2*)
5. Approximately 20% of the property has Prime Farmland if Irrigated soils (Map Unit Symbol 100B), however most of the property is listed as Farmland of Local Importance (Map Unit Symbols 182B, 183C, and 201B) on the *Web Soil Survey* by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). A description of Farmland of Local Importance is attached (Exhibit A-4). In a conversation with Jay Skovlin, local NRCS soil scientist, Mr. Skovlin stated that the Farmland of Local Importance classification was not intended to be used to determine important agricultural land. It is the lowest tier of farmland soils and the criteria have a low threshold so this classification does not show the most productive soils in the Valley. The classification will be used as a preliminary screening tool for the Farm and Ranch Land Protection Program. Mr. Skovlin will be writing the County a letter to summarize this information.

Conclusions of Law:

1. The creation of these lots will take a small amount of Prime Farmland if Irrigated out of production. The County has been advised that the Farmland of Local Importance classification should not be used to determine productive agricultural land.
2. With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on surrounding agriculture will be reduced.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. The application states that 37.4 irrigated acres of water are provided to the property by the Bitter Root Irrigation District (BRID). According to the application and the preliminary plat, there is a 15-foot wide existing irrigation easement centered on a culverted ditch that traverses the property from east to west along the southern quarter of the parcels. The irrigation ditch appears to serve property to the east and west. Irrigation easements for the lots within

the subdivision are shown on the preliminary plat and a reduced copy of the preliminary plat. The applicant is proposing that Lots 1 through 5 and Lot 15 will be allotted 1.5 irrigated acres each, Lots 6, 7, 10 through 14, and 16 through 20 will each be allotted 2.0 irrigated acres, and Lot 8 will be allotted 2.4 irrigated acres. (Application)

2. As a requirement of final plat approval, Section 3-4-4(a)(xxi) of the RCSR requires the approval of the downstream water users, in this case the Irrigation District, when irrigation infrastructure is to be altered. This provision applies to the extension of the existing infrastructure to serve all the lots within the subdivision.
3. A letter from the Bitter Root Irrigation District, dated April 11, 2007, states their approval of the re-allocation of water rights and Irrigation Plan. (Application)
4. Installation of irrigation infrastructure is required to be completed prior to final plat approval.
5. To notify future property owners of the irrigation rights associated with this property and the role of the Irrigation District and to mitigate potential impacts on agricultural water user facilities, a notification of the irrigation facilities and easements shall be filed with the final plat. (*Condition 1*)
6. The existing and proposed locations of all irrigation facilities/ditches within their associated easements are required to be shown on the final plat. Irrigation easements shall be shown on the final plat as a condition of approval in order to mitigate impacts of the subdivision on agricultural water user facilities. (*Condition 8*)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on agricultural water user facilities will be reduced.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

1. The subdivision is located within the Corvallis Rural Fire District. The Corvallis Rural Fire District has provided comments on previous subdivision proposals indicating they have adopted a policy which addresses access, posting of addresses, and water supply requirements. The subdividers shall meet the water supply requirements for the Corvallis Rural Fire District, which is a 1,000 gallon per minute water supply or a 2,500 gallon per lot water storage. Alternatively, the subdividers can contribute \$500 per lot and provide a letter from the Corvallis Rural Fire District that the contribution has been made prior to final plat approval. Conditions of approval will meet the recommendations of the Corvallis Rural Fire District. (Exhibit A-5) (*Conditions 2 and 5*)
2. With this subdivision, it is estimated that approximately 10 school-aged children will be added to the Corvallis School District, assuming an average of .5 children per single family residence (Source: Census 2000).
3. The Corvallis School District was notified of the subdivision proposal. In a letter dated February 14, 2007, the School District stated that it has no specific objection to the subdivision, but noted that an increase in students continues to affect their infrastructure. The subdividers are proposing to contribute a voluntary donation of \$250-per-lot to the school district. A

- condition that the subdividers provide evidence of a contribution to the School District is required prior to final plat approval. (Exhibit A-6) (*Condition 6*)
4. Individual wells and wastewater treatment systems are proposed to serve the lots.
 5. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (*Conditions 2 and 3*)
 6. The Ravalli County Sheriff's Office provides law enforcement services to this area. No comments have been received by the Sheriff's Office. The current level of service is not known, but it is generally understood that the Sheriff's Office is operating at an inadequate level of service. The applicant is not proposing any mitigation. To mitigate impacts on the law enforcement, the subdivider shall submit an (amount)-per-lot contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plat approval. (*Condition 14*) (*Staff Note: Since the current or planned level of service for the Sheriff's Office is unknown and the applicant has not proposed any mitigation, Staff recommends the BCC negotiate an amount per lot with the applicants.*)
 7. The Marcus Daly Memorial Hospital EMS Department provides ambulance services to the property.
 8. Bitterroot Disposal provides solid waste disposal service to this site.
 9. There are twenty proposed single-family residential lots within this subdivision. It is estimated at build-out that this subdivision will generate a total of 160 vehicular trips per day, assuming 8 trips per day per single-family dwelling.
 10. Hamilton Heights Road, a County-maintained road providing access to the subdivision from Eastside Highway, does not meet County standards. The applicant is required to pay the pro rata share of the cost to improve the portion of this road providing access to the subdivision from Eastside Highway to meet County standards. The preliminary pro rata share estimate is \$4,184.02.
 11. The subdividers are proposing to construct one internal subdivision road, Prestige Way, to provide service to all the lots within the subdivision. The application packet states that the internal road is proposed to meet County standards and have an 18-foot-wide asphalt paved travel surface with two-foot shoulder widths within a 60-foot-wide public utility easement. The initial approach up Prestige Way has a grade of up to eight percent. The RCSR maximum road grade allowed is 10%. An engineer's certification that the roads meet County standards is a requirement of final plat approval. The road plans have received preliminary approval by the Road Department. (Exhibit A-2)
 12. To mitigate impacts on the local road system, the final plat shall show a no-ingress/egress zone along the Hamilton Heights Road frontage of the subdivision, except the Ravalli County Road and Bridge Department (RCRBD) approved approach for the internal subdivision road. A no-ingress/egress zone shall also be shown along both sides of Prestige Way as it travels through the southern portions of Lots 2 through 5 to keep future lot owners from accessing off steep slopes. A notification of this limitation of access shall be included in the notifications document. (*Conditions 1 and 7*)
 13. To mitigate impacts on the local road system, a stop sign and road name sign shall be installed at the intersection of Hamilton Heights Road and Prestige Way prior to final plat approval. (*Condition 10*)
 14. Submittal of a final grading and drainage plan approved by Montana Department of Environmental Quality (DEQ), a General Discharge Permit for Storm water

Associated with Construction activity from DEQ (if required), an approved approach permit from the Ravalli County Road and Bridge Department for the internal subdivision road(s), an approved road name petition, and certification that the constructed road meets County standards are requirements of final plat approval.

15. Installation of all infrastructure improvements is required to be completed prior to final plat approval, which includes construction of the roads and storm water drainage facilities for the interior road, and installation of the stop sign and road name sign.
16. To mitigate impacts on local services and ensure public access, the easement for the internal subdivision road shall be labeled as a public road and utility easement on the final plat. (*Condition 9*)
17. A preliminary road maintenance agreement was included in the application packet. A provision within the document prohibits on-street parking to mitigate impacts on Local Services. The final plat application packet is required to include a road maintenance agreement that meets the requirements of the Ravalli County Subdivision Regulations. To mitigate impacts on Local Services, a notification of the road maintenance agreement shall be included in the notifications document filed with the final plat. (*Condition 1*)
18. The United States Postal Service (USPS) sent a letter to the Planning Department on June 8, 2007 and an email on June 29, 2007 requesting that Collection Box Units (CBUs) be required for all subdivisions with eight or more lots (or if the local post office requests a CBU) and that the locations of the boxes be approved by the USPS (Exhibit A-7).
19. To mitigate impacts on local services, the applicants shall provide evidence that plans for a CBU (location and specifications) have been approved by the local post office. (*Condition 11*)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

1. The property is currently being used as horse pasture and is covered with grasses, weeds, and a couple trees.
2. Section 5-4-5(b)(3) requires internal subdivision roads serving six to 20 lots to be paved. The paving of the road will reduce air pollution from the subdivision.
3. The subdividers are proposing individual wells and wastewater treatment systems to serve each lot within this subdivision. A Certificate of Subdivision Plat Approval from Montana Department of Environmental Quality (DEQ) is required to be submitted with the final plat.
4. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Application)
5. An unnamed creek traverses the northern edge of this subdivision, which drains an area less than 15 square miles and does not require a floodplain analysis. FWP recommended designating a 25 to 50-foot no-build/alteration

zone extending outward from the centerline of the drainage/creek area and delineating this area on the plat. The applicant is proposing a 100-foot wide no-build/alteration zone along the unnamed creek. To mitigate impacts on the natural environment, the no-build/alteration zone shall be shown on the final plat, as proposed on the preliminary plat. A notification of the no-build/alteration zones and a reduced copy of the final plat showing the locations of the no-build zones shall be included in the notifications document and filed with the final plat. (*Conditions 1 and 12*)

6. Although FWP did not specifically recommend riparian covenants for this area, they have provided comments on other subdivisions with riparian areas. To mitigate impacts on the natural environment, riparian covenants applying to the no-build/alteration zone shall be included in the covenants filed with the final plat. (Exhibit A-1) (*Condition 2*)
7. The preliminary plat shows wetlands on the property along the ditch to the south of the subdivision along the easement for Hamilton Heights Road. The applicant has proposed to install a culvert 20 feet west of the internal road approach adjacent to Hamilton Heights Road. An application has been submitted to the US Army Corps of Engineers for this work because wetlands are presently located in that area. Section 3-4-4(a)(xxiii) requires the applicant to submit a copy of the final permit from the US Army Corps prior to final plat approval.
8. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (*Condition 2*)
9. Based on the noxious weed evaluation form submitted with the preliminary plat application, the property has approximately one acre of Hoary Alyssum, scattered Spotted Knapweed, Canada Thistle, and about four acres of Tall Buttercup. An approved noxious weed and vegetation control plan is required to be filed with the final plat for each phase. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (*Condition 2*)
10. The Montana Natural Heritage Program did not identify any sensitive plant species located within the same section as the subdivision.

Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

The property is approximately 5 miles southeast of Corvallis and is adjacent to development that is approximately one unit to twelve acres.

A letter from Montana Fish, Wildlife, and Parks (FWP) recommends that the Living with Wildlife provisions be included with the covenants for this subdivision. (Exhibit A-1) (*Condition 2*)

To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (*Condition 2*)

The property is not located within big-game winter range, as identified by Montana Fish, Wildlife, and Parks.

According to the Montana Natural Heritage Program, three sensitive species are located in the same section as this property: Townsend's Big-Eared Bat (*Corynorhinus townsendii*), Olive-sided Flycatcher (*Contopus cooperi*), and Fringed Myotis (*Myotis thysanodes*). Due to lack of suitable habitat for these animals, the subdividers requested and received a waiver from the requirement to submit a sensitive species report. (*Application*)

According to the environmental assessment, trout may be present within the unnamed creek located in the northern edge of the subdivision. The applicant proposed a no-build/alteration zone within 100-feet of the creek. To mitigate impacts on wildlife & wildlife habitat, the no-build/alteration zone along the unnamed creek shall be shown on the final plat as shown on the preliminary plat and a notification of the no-build/alteration zone shall be in the notifications document filed with the final plat. In addition, riparian provisions shall be included in the covenants filed with the final plat. (*Conditions 1, 2, and 12*)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on Wildlife & Wildlife Habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

1. Some large trees are located within the Hamilton Heights road easement to the west of the subdivision approach. To increase traffic visibility and mitigate impacts on public health & safety, the preliminary approach permit requires that these trees be removed (*Application*). To mitigate impacts on public health and safety, the applicant shall provide evidence that the trees have been removed prior to final plat approval. (*Condition 15*)
2. To mitigate impacts on local services and public health & safety, a stop sign and road name sign shall be installed at the intersection of the internal subdivision road (Prestige Way) and Hamilton Heights Road prior to final plat approval. (*Condition 10*)
3. To mitigate impacts on public health & safety, the final plat shall show a no-ingress/egress zone along the Hamilton Heights Road frontage of the subdivision, except the Ravalli County Road and Bridge Department (RCRBD) approved approach for the internal subdivision road. A no-ingress/egress zone shall also be shown along both sides of Prestige Way as it travels through Lots 2 through 5 to keep future lot owners from accessing off steep slopes. A notification of this limitation of access shall be included in the notifications document. (*Conditions 1 and 7*)
4. According to the application, the nearest police protection to the subdivision is the Ravalli County Sheriff's Office, located approximately 5.5 miles away. To mitigate impacts on the law enforcement, the subdivider shall submit an (amount)-per-lot contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plat approval. (*Condition 14*) (*Staff Note: Since the current or planned level of service for the*

Sheriff's Office is unknown and the applicant has not proposed any mitigation, Staff recommends the BCC negotiate an amount per lot with the applicants.)

5. The proposed subdivision is located within the Corvallis Rural Fire District, located approximately 5 miles from the subdivision. To mitigate impacts on public health & safety, access requirements and county-issued address requirements shall be placed in the covenants. The subdividers shall also provide the required water storage/supply or a \$500-per-lot donation to the Corvallis Rural Fire District. *(Conditions 2 and 5)*
6. To mitigate impacts on public health & safety, the subdividers shall apply for County-issued addresses and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. *(Conditions 2 and 4)*
7. According to the application, the subdivision is located 5.9 miles from the Marcus Daly Hospital and the same distance from the ambulance service serving the hospital. The Marcus Daly Memorial Hospital EMS Department was notified by mail of the proposal, but no comments have been received to date.
8. Individual wells and wastewater treatment systems are proposed for lots within this subdivision. These items will be reviewed by the Montana Department of Environmental Quality. *(Natural Environment)*
9. To mitigate impacts on public health & safety, a notification of proximity to the unnamed creek along the northern boundary of the property shall be included in the notifications document. *(Condition 1)*
10. To mitigate impacts on public health & safety, a 100-foot wide no-build/alteration zone along the unnamed creek shall be shown on the final plat, as shown on the preliminary plat. A notification of the no-build/alteration zone shall be included with the notifications document. *(Conditions 1 and 12)*
11. The preliminary plat shows that Lots 1 through 5 have steep slopes (greater than 25%), which are required to be identified as no build/alteration zones on the final plat. The first portion of the internal road traverses the steep slopes. The applicant submitted preliminary road plans to the Road and Bridge Department showing how the road would be graded and preliminary approval has been granted. In order to mitigate impacts on public health & safety, a no-build/alteration zone on slopes greater than 25% shall be shown on the final plat, excepting the proposed road easement for Prestige Way and a notification of the no-build/alteration zone shall be included in the notifications document. *(Conditions 1 and 13)*
12. The preliminary plat and soils map indicate that the subdivision may have soils rated as very limited for road and building construction. To educate property owners and to mitigate potential impacts of this subdivision on public health & safety, a notification of the potential for very limited soils shall be included in the notifications document filed with the final plat. A reduced plat showing the approximate locations of soils rated as very limited for roads and building construction and descriptions of the very limited soils in question shall be attached to the notifications document as an exhibit. *(Condition 1)*
13. There is a prevalence of radon in the County and to mitigate impacts on public health & safety, the covenants shall include a statement regarding radon exposure. *(Condition 2)*

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on public health & safety.

Commissioner Rokosch opened Public Comment.

Leonard Shepherd of Shepherd Surveying stated they concur with the Staff Report.

Ron Skelton stated he sent a letter to the Board with some questions. All of his questions were answered with the exception of "What is the nature and capacity of the aquifer?" He would like to speak regarding the agricultural irrigation. He has 10 acres, east boundary along with the Nelsons and the Jansson's. The irrigation ditch is located on the top of the ridge. The ditch is 2 ½ feet wide and an average of 2 feet deep. Water is pumped out of the ditch to 5 parcels and delivered with a ten horse pump and a main line. Dan Ran's house is close to the ditch, about 40 feet. His residence is 100 yards from the ditch. He has experienced some flooding. About a year ago, the ditch on the property was buried and the water was piped into 24 inch corrugated plastic pipe. This summer a ditch was dug parallel to the piping. There is a lot of debris. What kind of engineering will it take to deliver irrigation water without debris?

Kay Gervais stated this subdivision will impact everyone surrounding it. They have viewed the property and it is one of the last open fields with prime agricultural land. She is concerned about the irrigation. They have having trouble distributing water now. She presented a picture to the Board of the horizon. She stated by having this subdivision it will change the quality of life for the existing landowners. She hopes this major subdivision will be denied.

Commissioner Rokosch requested Kay's letter and picture be submitted for the record. He also read a letter from the Nelsons who could not be present for the public hearing. The Nelsons are adjacent landowners of the proposed subdivision.

Commissioner Rokosch called for any further public comment.

Alan Maki stated there is an inconsistency with the neighborhood. He could walk from this parcel to the remainder of a farm which is still being used for agricultural and then from his farm up to Philipsburg. The proposed subdivision site has Burnt Fork Loam soil, which is prime soil for farming. He discussed the types of soil present. He stated the three northern 10-acre tracts of this lot are good farmland. It could also be locally important. As for the effects on agriculture, it is negative. There are laws to protect the effects on agriculture. As stated previously, the area already has issues with irrigation water. What will happen when we have 20 more residents trying to use that water?

Alan spoke of Public Health and Safety. He presented the Board with well logs east and north of subdivision and from another residence. He suggested because of a spike in static water level due to irrigation, the future residents of this subdivision may drink their

sewer water. He was concerned with the access traversing the 25% slopes. The values of agricultural production from this land during today's market are \$25,000 - \$33,000 gross per acre. He spoke of the monetary value that is added into the economy by farming and lost by residential development.

Nancy Gresham east of property stated she would like to address the access of the subdivision. Traffic is very fast down Hamilton Heights. The traffic will not be able to see traffic from the subdivision to the road. She also said there are water problems. The people of the county have spoken to keep open land. She asked the Commissioners to uphold that request.

Neil Maki lives east of the property. He has been irrigating for over 60 years. This place will raise 6 to 8 tons of alfalfa and 300 100-pound sacks of potatoes, sugar beets, barley, and winter wheat. He stated the ground will raise about anything. This is extremely valuable farmland. This is farmland irrigated under the big ditch. In regards to the six criteria, what about the irrigated farm? He spoke about how productive this farmland is. He is extremely concerned about the effects of the construction regarding the agricultural prospects. He said that Oliver Wilkinson came to Montana during the 1930s and was able to grow things on this farm. He stated if the Board does not deny this subdivision, they do not care for the future of the valley.

Commissioner Rokosch called for any additional comments.

Leonard Shepherd stated he would like to address Mr. Skelton's question regarding the septic. This project will be reviewed by DEQ standards. As for the ditch and ditch water, it is standard procedure to culvert the ditch. He said that the irrigation plan was created by Circle Irrigation and approved by BRID. To address Alan Maki and the well logs; that would be a DEQ issue as well. He doubts they will be drinking their sewage. The access from Hamilton Heights Road is a 25% slope. The road design has been preliminarily approved and meets county standards. The population of Ravalli County voted zoning to be 2 acre minimums. This proposal has been revised to meet interim zoning requirements. Most of the issues introduced by Ms. Gresham have been addressed. He stated he does not have any comments in response to Neil Maki's statement. He does not have the knowledge of farming in that area but asked if the land was so lucrative why it had been lying fallow.

Marlin Powell, owner, stated he would like to thank the Planning Staff for their hard work on this project. He started this project three years ago. He requested the aerial view of the property. He stated his son raises horses on the property. They have cut a ditch to let it flood over. They have been working with Mary Ann Stock on the water issue. If this was prime agricultural land, then why is Ms. Stock's property not lucrative? Mary Ann's property is not great farmland. It is good grazing land. The apple trees on her land have not been harvested or maintained. Mary Ann has had water every year. If water has not flowed to her, it has been because of the upstream water users, not him. He has gone to BRID and has worked with them to ensure her water. He presented a map to the Board illustrating exactly where the subdivision will be getting their water from. Commissioner

Rokosch asked what size the pipe will be to serve the Stock property. Marlin replied it would be the existing 15 to 18 inch culvert. Marlin stated it will be metered and locked. This system is what BRID has requested. They have not cut any corners. Commissioner Rokosch asked if the irrigation plan is sufficient to provide irrigation for the entire subdivision. Marlin replied yes, it will be distributed on the lots split even and odd days. Regarding static water level, John Horat recommended they cover all of the bases in order to make sure they have sufficient groundwater. He further explained he has been in contact with the Fire Department to insure their satisfaction with the access to the road. They have taken all the necessary steps to be within the standards. When the 1 per 2 initiative passed, they revised the subdivision to meet those standards. There is not much land that can be subdivided. He has complied with everything requested from the Planning Department. He has exceeded most of those requests. It is a good location for this subdivision. He has addressed Public Health and Safety. He plans to make the entrance attractive. This is not going to be a ghetto subdivision. He would like to see the Commission establish affordable housing. He has taken extreme care to do this subdivision right and make it enjoyable for the future landowners.

Commissioner Rokosch stated it is not up to the Board to establish affordable housing. Marlin stated he did not intend to place blame upon the Board. He wanted to imply there is a need for affordable housing. Commissioner Driscoll stated when you overbuild you can obtain affordable housing.

Commissioner Rokosch called for any further comments.

Alan Maki stated he realizes the developer is looking out for his interest. He is looking out for his interest too, which is farming. In his lifetime the population of the world has increased by a billion people. He feels they have a responsibility to look at where these subdivisions go. His philosophy is the land is not a gift from our fathers but is on loan from our children. Development is short term; farming is very long term. It will give money to the community year after year. People need food to live.

Neil Maki stated at Rock Ditch they had three workers at the beginning of the ditch and three at the bottom of the ditch. They took their shovels and started to dig. The dirt was black and purple and smelled like a sewer. Sewer water had come down from the houses above. They do have sewer problems. A neighbor has sewer in his well. Water is a big issue. Ravalli County has a sewer problem.

Ron Skelton asked how the debris would be addressed. Marlin replied Circle Irrigation is working with him. They would filter by using screens.

Andy Polumsky stated he lives in a subdivision in Corvallis. They had a system like the one Marlin is speaking about. It works by pumping from the source of water to the lots and then each property is watered. The HOA is responsible for maintaining the screens. They never had a plug up. This is done all over the valley.

Commissioner Rokosch questioned the DEQ permit process. Leonard replied this still in the works.

Marlin asked Neil how long has their neighbor had sewage in his water and why has the sanitarian not addressed it? Neal replied they have gone to the sanitarian. Commissioner Driscoll commented she has viewed this property. She explained how this situation occurs. Brief discussion followed.

Commissioner Rokosch called for any further comment, hearing none, closed public comment.

Commissioner Rokosch stated Planning Board does not have a recommendation.

Commissioner Rokosch opened Board deliberation.

Commissioner Chilcott stated this project has no variance requests from the subdivision regulations. They have met all of the requested standards. They have met the requirements for water and sewage. Jen replied they do not review water and sewer. That is up to DEQ. Commissioner Chilcott asked if there were any “red flags” in this application. Renee replied that the application meets the design standards.

Commissioner Chilcott stated the ‘1 per 2’ and its interpretation does not provide for efficient development. This property does have 8 acres of prime agricultural land. This development will be reviewed by DEQ. The county does not have money to map the aquifer. The county has no evidence to say this development will take down the aquifer.

Commissioner Rokosch stated he would like to address different design options. He is in disagreement with Commissioner Chilcott’s statement.

Commissioner Driscoll stated when a scientific diagnosis is made; Doctors take in account the patient’s family history. The Commissioners have to take in account the testimony from the adjacent landowners because they live there.

Commissioner Chilcott stated he is not trying to discredit the Makis’ statements. The Makis would know the situation better than him, but they do not have any evidence of the water situation. Brief discussion followed between Alan Maki and Commissioner Chilcott.

Commissioner Driscoll stated the report does state there is adjacent agricultural land. Further discussion followed between Alan Maki and Commissioner Chilcott.

Alan Maki explained that farming is hard. The valley’s farmers and ranchers rely on leased ground. When one good piece of farmland is developed, eventually the other farmers give up farming and try to develop their land too. If the Planning Board tells them they cannot develop their land because it is prime farmland, the developer can point to the other person who was able to develop his land. Soon, there is no farmland left.

Commissioner Driscoll stated we are not computers. We need to filter the testimony as humans. Commissioner Chilcott stated he is in disagreement with Commissioner Driscoll because the Commission must follow certain laws.

Commissioner Rokosch stated there are a number of conditions they have to consider. There are currently six criteria which they follow. It should include surrounding agricultural land. They should consider water availability. He read through the six subdivision review criteria, pointing out effects on agricultural water user facilities and effects on the natural environment, in particular, human ecosystems. Planning Staff has provided a report based on the assessments.

Commissioner Driscoll stated one of the items she is familiar with is there is arsenic present in the wells. She has walked the road. The road is hazardous going up the hill. It could be very slippery in the winter time. It is 5.5 miles from the Sheriff's Office.

Commissioner Rokosch said the Growth Policy has not been considered and requested the developer present mitigation for the impacts.

Leonard stated the impact on the farmland is not an exact science. There are no guidelines on that issue. It is up to Mr. Powell to address. He outlined the proposed donations to the School District, Fire District, and pro rata requirement. There is still the amount of contribution to the Sheriff's Department outstanding. Commissioner Rokosch requested Mr. Powell mitigate impacts via contributions.

Marlin stated the county was going to sell his home until the taxes were paid. Financially, it has been a tough year. He is willing to contribute \$500 per lot for the Sheriff's Department, Fire District and increase the School District to \$500 per lot as well. He requested that it be payable at the closing of the sale on the lots. Commissioner Rokosch replied accepting the money later changes the responsibility of monitoring money to someone else and that service providers will not have a plan for increased demand, which is a real problem. They are now asking mitigation be paid prior to final plat approval.

Commissioner Driscoll agreed and stated that people purchasing lots and putting up houses do not know about the mitigation required. Residential developments cost the taxpayers money. All they are ensuring is those impacts are met financially.

Marlin stated in all due respect, it would be put on the final plat as public record. He noted there would not be impacts from the development or use of additional services until the lot is sold. What is acceptable?

Commissioner Grandstaff stated they did not discuss the impact on the Corvallis School District.

Commissioner Rokosch stated they do not have impact fees in place for capital improvements; however they do have data on impacts to the local schools.

Marlin asked what other subdivisions have been paying.

Commissioner Rokosch said the maximum amount offered has been \$1,000-per-lot to the school district and \$500-per-lot to the Sheriff's Department. He requested a five minute recess.

Marlin stated after discussion with his son, he will contribute \$500-per-lot to both the Fire Department and the Sheriff's Department and \$1,000-per-lot to the School District.

Commissioner Rokosch stated they have received information in regards to impacts on education. This information comes from School Superintendent Dr. Ernie Jean. The annual cost for Corvallis school for the 2006-2007 school year is \$5,808 per student, not including capital costs, but including State ANB portion and the local mill levy. Local mill levy portion for that amount is \$1, 638 per student. That is the amount residents are paying towards the cost of educating a student. These funds are derived from the existing population. Census figures being used currently are ½ children per housing unit. These numbers were based on cost of student. It would make full cost of student per house at approximately \$2,909. These are not capital costs and not covered by impact fees. These are amounts that are calculated for the impact fees and the cost of the student, not raising the level of service. We are talking about over \$140,000 of impact fees this project would generate if impact fees were in place that would be passed on to taxpayers. Non-capital costs based on these figures would roughly \$29,000.

Commissioner Chilcott asked if existing parcels that are bare ground have to pay school levies. Staff did not know the answer.

Commissioner Driscoll stated this is a balancing act. The Commissioners are here to ensure the criteria are met and have to look at the citizen's interest and the developer's request.

Marlin asked if the contributions hold sway with the Board's decision. Commissioner Grandstaff stated no. She stated the Board weighs the six criteria. Commissioner Rokosch explained that in some cases, including impacts to local services, impacts to services can be mitigated through financial donations. In other cases, there are circumstances and impacts that cannot be mitigated through donations. Marlin asked how much he would need to pay to get a "yes" vote.

Commissioner Chilcott stated Marlin's question is pertinent. The Board goes through the six criteria and mitigates the issues. Commissioner Chilcott said what they are trying to recover is the disparity of tax revenue from agricultural land to developed residential properties. He would suggest that with the absence of tax knowledge, the amount they are dealing with per student is \$1,800. Commissioner Rokosch stated he disagrees with Commissioner Chilcott.

Commissioner Chilcott requested a point of clarification.

Commissioner Rokosch stated the Board has gone through the six criteria and are now mitigating the contributions.

Commissioner Driscoll stated city people and agricultural people have different ways of dealing with water issues. She is concerned with potential conflicts from these different views.

Commissioner Grandstaff made a motion to deny Hamilton Heights, Block 13, Lots A-D, AP Twenty-Lot Subdivision based on failure to mitigate the impacts on agriculture, including impacts on adjacent agricultural operations and loss of prime and important agricultural soils, based on failure to mitigate impacts on agricultural water users facilities including conversion to unintended uses and based on failure to mitigate the impacts on public health and safety of the road and angle of approach. Commissioner Driscoll seconded the motion.

Commissioner Rokosch requested any comments from the Board.

Commissioner Grandstaff stated the Makis' made the case. The agricultural water will be used for unintended uses, such as landscaping. Potential conflicts were not mitigated and the road was an issue.

Commissioner Chilcott replied he would like to know why Commissioner Grandstaff is motioning for denial when the Planning Staff Report indicates the applicant is in compliance.

Commissioner Rokosch stated that the property has farm soils and the approach and traffic was a problem.

Commissioner Chilcott stated BRID asked that water stay with the land and be divided proportionately to new lots. If these lots had water, hopefully that would mitigate the weed problem. He stated the Board should offer the developer an opportunity to mitigate these issues.

Commissioner Grandstaff stated the County Attorney has advised that based on law, the Board has to accept the developer's preferred mitigation and then make a decision.

Renee requested that the Board go through their findings for denial during the motion because the Board cannot come up with findings later.

Commissioner Rokosch stated the Board had already stated their findings.

Commissioner Chilcott reiterated that the developer should be able to address these issues before the Commission makes a decision.

Commissioner Driscoll suggested the Board go through the six criteria as Renee suggested.

Renee summarized that the findings included the Makis' testimony regarding important agricultural soils and loss of prime farmland. Staff has a finding on soils. Impacts were on agricultural water user facilities and unintended uses (landscaping), traffic safety problem, steep slopes, severe soils and the angle of approach.

Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll voted 'aye'. Commissioner Chilcott voted 'nay'. Motion carried.

Commissioner Rokosch requested a ten minute recess before starting the next agenda item.

The Board reconvened for a public meeting for Maple Grove Commercial Park Subdivision for lease or rent with decision.

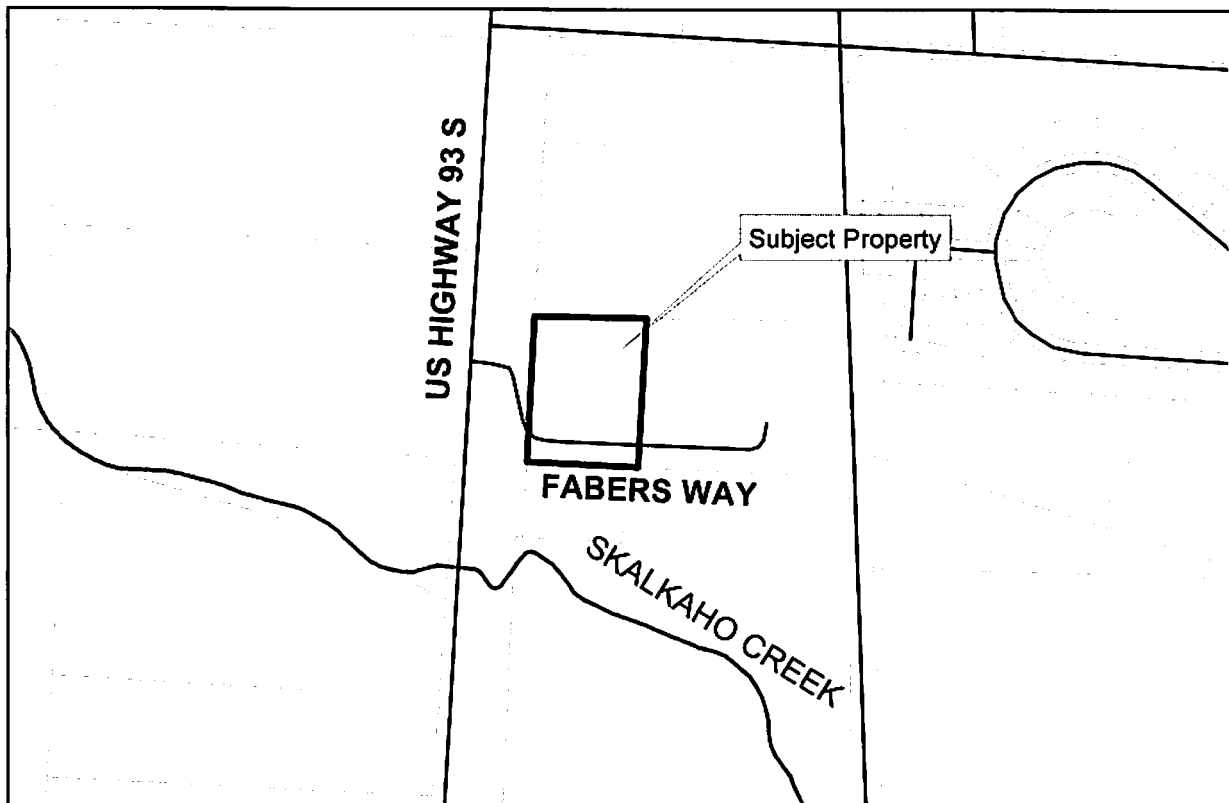
Commissioner Rokosch called the meeting to order. He requested any conflicts of interest. Hearing none, Commissioner Rokosch requested the Planning Staff Report. Jen presented the Planning Staff Report as follows:

**MAPLE GROVE COMMERCIAL PARK
FOUR-UNIT SUBDIVISION FOR LEASE OR RENT AND
ONE VARIANCE REQUEST**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS (BCC)

CASE PLANNER:	Jennifer De Groot	
REVIEWED/ APPROVED BY:	Renee Van Hoven	
PUBLIC MEETING:	BCC Public Meeting: September 13, 2007 Deadline for BCC action: September 14, 2007	11:00 a.m.
SUBDIVIDER:	Ian Northcott 106 Fabers Way Hamilton, MT 59840	
REPRESENTATIVE:	Bitterroot Engineering & Design John Horat 1180 Eastside Highway Corvallis, MT 59828	

LOCATION OF REQUEST: The property is located south of Hamilton off US Highway 93. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

A portion of the SW ¼ Section 6, T5N, R20W,
P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was determined complete on July 26, 2007. Agencies were notified of the subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 and A-8 of the staff report.

LEGAL NOTIFICATION:

Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked August 27, 2007.

**APPLICABLE
REGULATIONS:**

The proposal is being reviewed under the Ravalli County Subdivision Regulations (RCSR), as amended May 24, 2007.

DEVELOPMENT

PATTERN:

Subject property	Commercial Rural
North	Farmstead Rural
South	Residential Rural
East	Residential Rural
West	Agricultural Rural

INTRODUCTION

The Maple Grove Commercial Park subdivision for lease or rent is a four-unit commercial proposal on four acres located a little over one mile south of Hamilton. There are two existing commercial structures on the property. The property is approximately 330 feet from Skalkaho Creek. Due to horizontal separation from the creek and because the structures are elevated by fill, the subdivider was granted a floodplain analysis waiver from the Ravalli County Floodplain Administrator.

Concurrent with the subdivision proposal, the subdivider is requesting a variance from Section 5-4-5(d) and 5-4-4(h) of the RCSR, to allow the subdivider relief from improving Faber's Way to meet County standards. The subdivider is proposing to construct a paved parking lot, which will encompass Faber's Way, instead of building a County standard road. The subdivider is proposing to grant 30 feet of easement for Faber's Way instead of the 60 feet that is required by the Ravalli County Subdivision Regulations.

Staff recommends conditional approval of the variance request and conditional approval of the subdivision.

RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS

SEPTEMBER 13, 2007

MAPLE GROVE COMMERCIAL PARK FOUR-UNIT SUBDIVISION FOR LEASE OR RENT AND ONE VARIANCE REQUEST

RECOMMENDED MOTIONS

1. That the variance request from Section 5-4-5(a) and 5-4-4(h) of the RCSR, to allow the subdivider relief from improving Faber's Way to meet County standards be **approved**, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report.
2. That the Maple Grove Commercial Park subdivision for lease or rent be **approved**, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report.

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION AND VARIANCE REQUEST

16. A document entitled "Notifications to Future Property Owners and Renters" that includes the following notifications and attachments listed below shall be included in the submittal of the final plan to the Planning Department and filed with the Clerk & Recorder's Office. This notification document should also be included as part of a lease or rental agreement for future renters and/or lessees:

Notification of Proximity to Agricultural Operations. This property is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

Limitation of Access onto a Public Road. A "no-ingress/egress" restriction exists along the US Highway 93 frontage of this property, excepting the approved approach for the internal subdivision road. All units on this property must use this approved approach. This limitation of access may be lifted or amended only with the approval of the Montana Department of Transportation. *(Effects on Local Services and Public Health & Safety)*

Notification of Road Maintenance Agreement. The internal subdivision road is not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A Road Maintenance Agreement for this road was filed with the Clerk & Recorder's Office and outlines which parties are responsible for maintenance and under what conditions. *(Effects on Local Services)*

Notification of Irrigation Facilities and Easements. On this property there are irrigation easements, as shown on the final plan. All downstream water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The filed subdivision plan shows the irrigation easements on the property. The downstream water rights holders must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders have the right to use the easements to maintain the ditches. (Include a reduced copy of the final plan as an exhibit) *(Prerequisites to Approval and Effects on Agricultural Water User Facilities)*

Notification of Severe Soils. On this property there are areas identified by the Natural Resources Conservation Service (NRCS) as potentially having soils rated as severe for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plan. Descriptions of the severe soils in question are included as exhibits to this document [the subdivider shall include the exhibits as attachments]. *(Effects on Public Health & Safety)*

Notification of Proximity to Skalkaho Creek. This property is located in close proximity to Skalkaho Creek. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the stream channel. It is recommended that the lowest floor and utilities of all proposed structures be located a minimum of 2 feet above the natural grade and that the property owners of this subdivision obtain flood insurance. *(Effects on Public Health & Safety)*

Notification of Proximity to a Potential Dam Inundation Area in the Event of a Catastrophic Failure of the Painted Rocks Reservoir Dam. The western portion of the property may be located within the dam inundation area for the Painted Rocks Reservoir Dam. The Painted Rocks Reservoir Dam is owned and operated by the State of Montana, Department of Natural Resources and Conservation District, Water Resources Division, Dam Safety Program (48 North Last Chance Gulch, P.O. Box 201601, Helena, Montana, 59620-1621). A map of the probable extent of the inundation area is included as an exhibit to this document [the subdivider shall include the exhibit as an attachment]. *(Effects on Public Health and Safety)*

17. The following protective covenants for this property shall be submitted with the final plan and filed with the Clerk & Recorder's Office. The subdivider should include a copy of the covenants with a rental or lease agreement for each unit. The covenants shall include the following provisions:

Waiver of Protest to Creation of RSID/SID. Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*

Living with Wildlife. (See Exhibit A-1 for required provisions.) *(Effects on Wildlife & Wildlife Habitat)*

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction on this property. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. *(Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health & Safety)*

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their buildings tested for radon. Contact the Ravalli County Environmental Health Department for further information. *(Effects on Public Health & Safety)*

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. The property owner shall control the growth of noxious weeds on the property. Contact the Ravalli County Weed District for further information. *(Effects on Agriculture and Natural Environment)*

Recommended Building Standards. The Hamilton Rural Fire District recommends that buildings on this property be built to International Residential Building Code (IRBC) building standards. For more information, contact the Hamilton Rural Fire District at PO Box 1994, Hamilton, MT 59840. *(Effects on Local Services and Public Health & Safety)*

Commercial Use Only. For as long as the interim zoning regulation recorded by the Ravalli County Commissioners as Resolution 2038 remains in effect, residential development shall be prohibited and the lot shall be used for commercial purposes exclusively. Upon the expiration of the emergency zoning regulation, this requirement shall cease. However, if the interim zoning ceases through the adoption of permanent zoning, those regulations shall then be in effect. *(Compliance with Applicable Zoning Regulations)*

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

18. The subdivider shall include an RSID/SID waiver in a notarized document filed with the Clerk & Recorder's Office that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*
19. Prior to final plan approval, the subdivider shall provide evidence that a \$500-per-unit contribution has been made to the Hamilton Rural Fire District for the two new units (\$1,000) prior to final plat approval. Alternatively, the subdivider shall provide a letter from the Hamilton Rural Fire District stating that the subdivider has conducted an engineering study to determine fire flow and

supplied the difference needed by the Hamilton Volunteer Fire Department.
(Effects on Local Services and Public Health & Safety)

20. The final plan shall show a no-ingress/egress zone along the US Highway 93 frontage of the subdivision, excepting the approach for Faber's Way, as approved by the Montana Department of Transportation. *(Effects on Local Services and Public Health & Safety)*
21. The 60-foot wide easement for Faber's Way shall be labeled as a "public road and utility easement" on the final plan. *(Effects on Local Services)*
22. A stop sign shall be installed at the intersection of Faber's Way and US Highway 93 prior to final plan approval. *(Effects on Local Services and Public Health & Safety)*
23. The Road Maintenance Agreement for Faber's Way shall state that other parcels that may have beneficial use of the road shall be allowed to join as members of the agreement without the consent of the current members. *(Effects on Local Services)*
24. The subdivider shall submit an (amount)-per-unit contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plan approval. *(Effects on Local Services and Public Health & Safety)*
25. The subdivider shall provide for a 60-foot wide easement for Faber's Way along the southern boundary of the property from US Highway 93 to the eastern boundary of the subject boundary on the final plan and in a separate document filed with the Ravalli County Clerk and Recorder's Office. *(Effects on Local Services and Variance)*
26. The parking lot shall be constructed as proposed in the parking lot plans preliminarily approved by the Ravalli County Road and Bridge Department. The final parking lot plans and actual construction shall be approved by the Ravalli County Road and Bridge Department prior to final plan approval. *(Effects on Local Services and Variance)*
27. The subdivider shall file a formal easement with the Ravalli County Clerk & Recorder's Office for the proposed 10-foot irrigation easement along the northern property boundary. *(Prerequisites to Approval and Effects on Agricultural Water User Facilities)*

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plan unless it is established by credible evidence that the proposed subdivision meets the following requirements:

H. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. The preliminary plan indicates that existing utility easements are located along US Highway 93. Utility easements are proposed along the internal subdivision road.
2. Section 3-4-4(a)(ii) of the RCSR requires that the existing and proposed utility easements are shown on the final plan.

Conclusion of Law

The proposed subdivision application provides for utility easements.

I. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plan and in any instrument transferring the parcel.

Findings of Fact

5. The subject property is accessed by US Highway 93 and the internal road (Faber's Way).
6. US Highway 93 is maintained by the Montana Department of Transportation.
7. Faber's Way is a private road within an existing 30-foot road easement accessed off US Highway 93. The road is located entirely on the subject parcel.

Conclusion of Law

Legal and physical access is provided on US Highway 93.

J. Assures that all required public or private improvements will be installed before final plan approval, or that their installation after final plan approval will be guaranteed as provided by Section 3-4-2 of the RCSR.

Findings of Fact

5. The subdivider is proposing to construct a parking lot, which will encompass Faber's Way. As a condition of variance approval, the subdivider shall construct the parking lot, as approved by the Ravalli County Road and Bridge Department, prior to final plan approval. (Variance)

6. Section 3-4-4(a)(xxvi) requires that the subdivider submit evidence that improvements have been made in accordance with the conditions of approval and requirements of final plan approval and certified by the subdivider prior to final plan approval.

Conclusion of Law

The final plan requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

- K. **Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plan is submitted.**

Finding of Fact

The application states that the property has water rights from Skalkaho Creek, but that these rights will not be divided.

Conclusion of Law

Since the subdivider is not transferring ownership or water rights, this requirement has been met.

- L. **Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plan is submitted.**

Findings of Fact

5. According to the application and the preliminary plan, there is a proposed 10-foot wide irrigation easement centered on an existing irrigation culvert that traverses the northern portion of the subdivision for lease or rent. The subdivider shall file a formal irrigation easement with the Clerk & Recorder's Office. (*Condition 12*)
6. Section 3-4-4(a)(ii)(V) requires that the irrigation easement be shown on the final plan.
7. The placement of structures or the planting of vegetation other than grass within the ditch easement is prohibited in 76-3-504(1)(k) MCA, without the written permission of the downstream water users. To meet this requirement, the subdivider shall place a notification in the Notifications Document that permission from the downstream water users is required for any alterations within the irrigation easement. (*Condition 1*)

Conclusion of Law

With the requirements of final plan approval and a condition requiring a notification that permission from the downstream water users is required for any alterations within the easement, this requirement will be met.

M. Provides for the appropriate park dedication or cash-in-lieu, if applicable.

Finding of Fact

The subdivider has requested a subdivision for lease or rent, meaning that the property will not be divided into separate lots. Section 6-1-5(b)(4) of the RCSR states that minor or major subdivisions where parcels are not created are exempt from parkland dedication/donation requirements.

Conclusion of Law

Parkland dedication/donation is not required, so this requirement is not applicable.

N. Overall Findings and Conclusions on Prerequisite Requirements

Finding of Fact

The preliminary plan and application materials appear to meet the requisite requirements.

Conclusion of Law

With the conditions and requirements of final plan approval, there is credible evidence that the subdivision application meets the prerequisite requirements.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plan, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

F. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. Section 5-1-9(a) of the Ravalli County Subdivision Regulations states: "When a lot(s) within an existing subdivision is further subdivided, the name of the subdivision shall remain the same as the parent subdivision and the lots shall be renumbered with a suffix or prefix as appropriate." The subdivider is proposing to call the subdivision for lease or rent Maple Grove Commercial Park. Because the final plan will only be filed at the Planning Department, this name will be acceptable for the final plan. However, any documents filed with the Clerk & Recorder's Office will need to refer to the proper legal description of the property, which is Faber Lots, Lot 1A.
2. The subdivider is requesting a variance from 5-4-5(a), to allow relief from constructing Faber's Way to meet County standards. Staff is

recommending conditional approval of the variance. (See Variance Report)

3. The Ravalli County Planning Department has reviewed this proposal in compliance with the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations. With the conditions and requirements of final plan approval for the subdivision and variance, the application will meet the design standards in Chapter 5.

Conclusions of Law

3. With the conditions and requirements of final plan approval for the subdivision and variance, the preliminary plan and subdivision application meet all applicable standards required in the RCSR.
4. The procedures for the application and review of this proposed subdivision, as outlined in Chapter 3 of the RCSR, have been followed.

G. Applicable zoning regulations.

Findings of Fact

3. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2038). The subdivider has submitted a commercial covenant to restrict all uses within the subdivision for lease or rent to commercial use only. (*Condition 2*)
4. The property is not within one of the voluntary zoning districts in Ravalli County.

Conclusion of Law

With the condition requiring a commercial covenant, this proposal complies with existing zoning regulations.

H. Existing covenants and/or deed restrictions.

Findings of Fact

- i. There are covenants on the property as listed in Book 213, Page 228 of the Ravalli County Clerk & Recorder's Office.
- ii. The restrictive covenants state the following:
 1. Property use shall be for agriculture, residential, and "clean" commercial purposes only.
 2. There shall be no commercial feedlot, pork or poultry operations, and no trailer park or commercial storage units, or residential mobile homes (except short term during residence construction).
 3. Property shall be kept free from automobile or machinery salvage, or other unsightly practices which would detract from the beauty and environmental integrity of the property.
- iii. The application states that all the buildings will be used as professional offices, light industrial, and commercial or retail businesses. Therefore, the proposal would meet the requirements of the covenants.

Conclusion of Law

The proposed subdivision is in compliance with existing covenants.

I. Other applicable regulations.

Findings of Fact

3. Following are applicable regulations:

- Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
- Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
- Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
- Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
- Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)

4. The subdivider was made aware of the applicable regulations at the updated pre-application conference held on December 18, 2006.

Conclusion of Law

The application appears to meet all of the applicable regulations.

J. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

6. The property is located approximately one mile south of the town of Hamilton off US Highway 93. According to the Montana Cadastral Database created by Montana Department of Administration Information Technology Services Division Geographic Information Services, the parcels surrounding the property are classified as agricultural rural, residential rural, or farmstead rural. From the Montana Cadastral Database, the 2004 aerial photograph, and preliminary plan, it appears that the parcels to the north, east, and west of the subdivision property may be used for agriculture.

To mitigate impacts on agriculture, a notification of proximity to agricultural operations shall be included in the notifications document filed with the Ravalli County Clerk & Recorder's Office. (Condition 1)

7. Approximately 75% of the property is covered with soils listed as Prime Farmland and Farmland of Statewide Importance by the Natural Resources Conservation Service (Source: U. S. Department of Agriculture, Natural Resources Conservation Service – 6/11/96). A list of the Prime Farmland Soils and Farmland of Statewide Importance is attached (Exhibit A-2). When the Faber Lots subdivision was platted in 1996, the preliminary plat decision noted that the property was in agricultural production. After 1996, the two created parcels were converted to

residential uses. In 2003, a Certificate of Subdivision Approval from the Montana Department of Environmental Quality authorized a rewrite to allow for two commercial structures on the property. (Exhibit A-3) There are currently two structures on the property and the property is being used for commercial purposes.

8. The Planning Department received an approved Ravalli County Subdivision Noxious Weed Evaluation Form from the Ravalli County Weed District that states Canada Thistle, Spotted Knapweed, Common Tansy, and Houndstongue are located on the property. (Exhibit A-4) These are all considered Category 1 noxious weeds. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. The subdivider will include a provision in the covenants that the owners of each lot control noxious weeds.

To mitigate impacts on agriculture, a noxious weed control provision shall be included in the protective covenants filed with the final plan for this subdivision. (Condition 2)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plan approval, impacts of the subdivision on agriculture will be reduced.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

7. According to the application and the preliminary plan, there is a proposed 10-foot wide irrigation easement centered on an existing culverted irrigation ditch that traverses the northern portion of the property.

Section 3-4-4(a)(ii)(V) requires that the 10-foot wide irrigation easement is shown on the final plan. To mitigate impacts on agricultural water user facilities, a notification stating that easements are on the property and downstream water users must approve relocations or alterations of the irrigation ditches will be filed with the Clerk & Recorder. In addition, the subdivider shall file a formal easement with the Ravalli County Clerk & Recorder's Office for the proposed 10-foot irrigation easement along the northern property boundary. (Conditions 1 and 12)

8. According to the application, this property has water rights from Skalkaho Creek. The subdivider is proposing to retain all the water rights with the property.

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plan approval, impacts on agricultural water user facilities will be reduced.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

20. The subdivision is located within the Hamilton Rural Fire District. In a letter dated September 1, 2007 (Exhibit A-5), Lisa Wade, Secretary of the Hamilton Rural Fire District, stated that if the conditions listed below are met, the Fire District would not find any negative effects to provide fire protection to the property:

- All buildings are requested to be built to IRBC code.
- All roads and driving lanes in the subdivision are requested to have an unobstructed driving width of 20'. In addition, the District requests the roads in the subdivision be in compliance with County subdivision road requirements without variances.
- Since it is a commercial subdivision the developer is requested to undertake an engineering study to determine the fire flow needed, taking into consideration the distance between the buildings, the building materials and possible use of a sprinkler system. Any development requiring more than 500 gallons per minute supplied by the Hamilton Volunteer Fire Department is requested to supply the difference. The water supply installation, upkeep and maintenance will be the responsibility of the subdivision, pursuant to NFPA 1, Section 18.3.5.

The Fire District realizes the financial burden of installing and maintaining a water supply and/or storage tanks capable of providing the required water flows and is willing to accept a voluntary contribution of \$500 (Five Hundred Dollars) per lot, in lieu of the water supply required by NFPA 1. Payment of \$500.00 will be due upon approval of the subdivision.

If all buildings in the subdivision are completely protected with an approved automatic sprinkler system, the above listed water supply and in lieu of payment schedule may be reduced by 50% (fifty percent).

21. Based on a conversation with John Horat, the subdivider's consultant, on August 29, 2007, the subdivider's preference is to provide a contribution of \$500-per-unit to the Hamilton Rural Fire District, excepting the two existing structures.
22. The preliminary plans submitted for the parking lot, which encompass Faber's Way, show that the driving lane for Faber's Way will have at least a 20-foot driving surface. According to a conversation with the subdivider's consultant, John Horat, on September 5, 2007, the driving lanes between the buildings will be at least 20 feet wide.

The following conditions will mitigate impacts of the subdivision on the Fire District:

- *A provision in the covenants recommends that all the buildings within the subdivision be built to International Residential Building Codes. (Condition 2)*
 - *The subdivider will provide a letter from the Hamilton Rural Fire District stating that a contribution of \$500-per-unit for the two new units (\$1,000 total) has been made prior to final plan approval. (Condition 4)*
 - *The parking lot shall be constructed as proposed in the parking lot plans preliminarily approved by the Ravalli County Road and Bridge Department. The final parking lot plans and actual construction shall be approved by the Ravalli County Road and Bridge Department prior to final plan approval. (Condition 11)*
23. The subdivider stated that he does not intend on making a voluntary contribution to the School District. Since this subdivision for lease or rent will result in four new commercial units and no residences will be created, no school contribution is warranted. The Hamilton School District has not submitted any comments regarding this proposal.
24. A shared well and shared wastewater treatment system currently serves the two existing buildings on the property. An additional shared well and shared wastewater treatment system is proposed to serve the two additional units. The property is not near any municipal water or wastewater systems.
25. The Ravalli County Sheriff's Office provides law enforcement services to this area. The Sheriff commented on this subdivision in a letter dated March 7, 2005. In the letter, he stated that the Sheriff's Office is having difficulty serving current residents in the County and that any new subdivisions would adversely affect his office from performing its duties. The subdivider is not proposing any mitigation.

To mitigate impacts on the law enforcement, the subdivider shall submit an (amount-per-unit) contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plan approval. (Condition 9) (Staff Note: Since the current or planned level of service for the Sheriff's Office is unknown and the subdivider has not proposed any mitigation, Staff recommends the BCC negotiate an amount-per-unit with the subdivider.)

26. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department. No comments have been received from this entity.
27. Bitterroot Disposal provides service to this site.
28. The application states that Qwest and NorthWestern Energy will provide utilities to the new units. There is an existing public utility easement on US Highway 93 and an existing 30-foot wide road easement along Faber's Way.

Section 3-4-4(a)(ii)(V) requires that the existing and proposed utility easements are shown on the final plan.

29. There are two existing and two proposed commercial buildings planned for this property. It is estimated at build-out that these units will generate a total of 470

vehicular trips per day, assuming 11.4 trips per day per 1,000 square feet of office space.

30. US Highway 93 is a state-maintained road providing access to the subdivision. No improvements or pro rata payments are required for this highway leading to the subdivision.

To mitigate impacts on the off-site road leading to the subdivision, the following conditions and requirement shall be met:

- *Section 3-4-4(a)(xiii) requires that the subdivider submit an approved approach permit from the Montana Department of Transportation for the approach off Faber's Way because there will be a change in use.*
- *The final plan shall show a no-ingress/egress zone along the US Highway 93 frontage of the subdivision, excepting the approach for Faber's Way, as approved by the Montana Department of Transportation. A notification of this limitation of access shall be included in the notifications document. (Conditions 1 and 5)*

31. The subdivider is proposing to construct a paved parking lot. Faber's Way will be part of the paved parking lot to provide access to the subdivision from US Highway 93. The developer has requested a variance from improving Faber's Way to meet County road standards, specifically from providing for a 60-foot wide easement and from meeting a few other minor road standards. The parking lot plans have received preliminary approval from RCRBD. A road name sign for Faber's Way currently exists at the road's intersection with US Highway 93.

To ensure that future lot owners have adequate access and to mitigate impacts on local services, the following requirements and conditions shall be met:

- *A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ, final parking lot plans and grading and storm water drainage plan, certification from an engineer that the parking lot plans meet the requirements and conditions of approval, and evidence that the improvements have been made in accordance with the conditions of approval and requirements of final plan approval, as required by Section 3-4-4(a) of the RCSR prior to final plan approval.*
- *A preliminary road maintenance agreement was included in the application packet. The final plan application packet is required to include a road maintenance agreement for Faber's Way that meets the requirements of the Ravalli County Subdivision Regulations per Section 3-4-4(a)(xix). A notification of the road maintenance agreement shall be included in the notifications document filed with the Clerk & Recorder's Office. (Condition 1)*
- *The 60-foot wide easement for Faber's Way shall be labeled as a public road and utility easement on the final plan. (Condition 6)*
- *A stop sign shall be installed at the intersection of US Highway 93 and Faber's Way. (Condition 7)*
- *To avoid duplication of road maintenance between the future owner(s) of this property and other properties to the east or south, which may have access, the Road Maintenance Agreement for Faber's Way filed with the Clerk & Recorder's Office shall allow for other properties that have beneficial use of the internal*

subdivision road to be included as parties to this agreement without the consent of the property owners within this lot. (Condition 8)

- *The subdivider shall provide for a 60-foot wide easement for Faber's Way on the final plan and file a separate easement agreement with the Clerk & Recorder's Office stating that the 60-foot wide easement is granted. (Condition 10)*

32. The property currently has four separate addresses to serve the four existing and proposed units off Faber's Way.
33. There are not currently any known RSID/SID districts affecting this property.

To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plan shall address these services/facilities. (Conditions 2 and 3)

34. The United States Postal Service (USPS) sent a letter to the Planning Department on June 8, 2007 and an email on June 29, 2007 requesting that Collection Box Units (CBUs) be required for all subdivisions with eight or more lots (or if the local post office requests a CBU) and that the locations of the boxes be approved by the USPS (Exhibit A-6). The subdivider has already placed a cement slab capable of holding two CBUs on the property. One CBU is present on the slab and appears to be serving the existing buildings.

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plan approval, impacts of the subdivision on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

11. There is presently a well and wastewater treatment facility on the property serving the two existing commercial units. The subdivider is proposing another shared well and shared wastewater treatment facility for the two proposed buildings. The subdivider submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur (Exhibit A-7).

Section 3-4-4(a)(ix) requires a DEQ Certificate of Subdivision Approval prior to final plan approval.

12. The property is located approximately 330 horizontal feet from Skalkaho Creek and 1,400 horizontal feet from the Bitterroot River floodplain. (See *Effects on Public Health & Safety*)
13. The addition of buildings in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution.

To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)

14. The Planning Department received an approved Ravalli County Subdivision Noxious Weed Evaluation Form from the Ravalli County Weed District that states Canada Thistle, Spotted Knapweed, Common Tansy, and Houndstongue are located on the property. (Exhibit A-4) These are all considered Category 1 noxious weeds. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. The subdivider will include a provision in the covenants that the owners of each lot control noxious weeds.

To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the Clerk & Recorder's Office. (Condition 2)

15. Both the State Champion Tree and Palish Sedge were identified by the Montana Natural Heritage Program as plant species of concern within the same section as the subject property, but because there were no signs of the plants present on the property, the subdivider requested and received a waiver from the requirement to submit a sensitive species report.

Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plan approval.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

Recommendations and comments from Fish, Wildlife & Parks from a letter dated April 5, 2005, (Exhibit A-1) are summarized as follows:

- a) The property is located in close proximity to the Bitterroot River, Skalkaho Creek, and their riparian areas.
- b) These riparian areas are usually used heavily by wildlife as habitat and linkage between habitat corridors.
- c) Living with wildlife provisions should be included in a development covenant to owners and should be provided to potential renters, perhaps as part of a rental agreement.

To minimize impacts of the subdivision on wildlife habitat, the following conditions shall be met:

- *Living with wildlife provisions shall be included in the covenants. (Condition 2)*

- *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*

Both the Westslope Cutthroat Trout and Bull Trout were identified by the Montana Natural Heritage Program as species of concern within the same section as the subject property. Because there are no streams or creeks on the property, the subdivider requested and received a waiver from the requirement to submit a sensitive species report.

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plan approval, impacts on wildlife & wildlife habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

14. The subdivider is proposing to pave a parking lot to serve the development. Faber's Way will be paved as part of the parking lot. This proposal will meet some, but not all, County road standards. (See *Effects on Local Services and Variance Report*)

To mitigate impacts on traffic safety, the following conditions and requirements shall be met:

- *Section 3-4-4(a)(xiii) requires that the subdivider submit an approved approach permit from MDT for the approach off US Highway 93 onto Faber's Way.*
 - *The final plan shall show a no-ingress/egress zone along the US Highway 93 frontage of the subdivision, excepting the approach for the internal road, as approved by the Ravalli County Road and Bridge Department. A notification of this limitation of access shall be included in the notifications document. (Conditions 1 and 5)*
 - *A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ, final parking lot plans and grading and storm water drainage plan, certifications from an engineer that the constructed parking lot meets the requirements and conditions of approval, a signed/notarized road maintenance agreement for Faber's Way, and evidence that road improvements have been made in accordance with the conditions of approval and requirements of final plan approval are required by Section 3-4-4(a) of the RCSR prior to final plan approval.*
 - *A stop sign shall be installed at the intersection of US Highway 93 and Faber's Way. (Condition 7)*
15. There are four addresses assigned to the subject property and will suffice to serve the two existing and two proposed units.

16. The proposed subdivision for lease or rent will be served by the Hamilton Rural Fire District, the Ravalli County Sheriff's Office, and the Marcus Daly Memorial Hospital EMS Department. (See *Effects on Local Services*)

To mitigate impacts on emergency providers, the following conditions shall be met:

- *A provision in the covenants shall recommend that all the buildings within the subdivision be built to International Residential Building Codes. (Condition 2)*
- *The subdivider shall provide a letter from the Hamilton Rural Fire District stating that a contribution of \$500-per-unit for the two new units has been made prior to final plan approval. (Condition 4)*
- *To mitigate impacts on the law enforcement, the subdivider shall submit an (amount-per-unit) contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plan approval. (Condition 9) (Staff Note: Since the current or planned level of service for the Sheriff's Office is unknown and the subdivider has not proposed any mitigation, Staff recommends the BCC negotiate an amount-per-unit with the subdivider.)*

17. The property consists of two commercial buildings which are utilizing a well and wastewater treatment system. The subdivider is proposing to serve the two additional units with a shared well and wastewater facility. The subdivider submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur (Exhibit A-7).

Section 3-4-4(a)(ix) requires a DEQ Certificate of Subdivision Approval prior to final plan approval.

18. The preliminary plan and soils map indicate that the subdivision may have soils rated as severe for road and building construction.

To educate property owners and to mitigate potential impacts of this subdivision on public health & safety, a notification of the potential for severe soils shall be included in the notifications document filed with the Clerk & Recorder. A reduced plan showing the approximate locations of soils rated as severe for roads and building construction and descriptions of the severe soils in question shall be attached to the notifications document as an exhibit. (Condition 1)

16. The property is located approximately 330 horizontal feet from Skalkaho Creek, which drains an area greater than 15 square miles. The subdivider submitted a floodplain analysis waiver that was granted on February 27, 2007. However, the Ravalli County Floodplain Administrator noted the following items:

- The property is separated from Skalkaho Creek by Faber's Way.

- The existing structures appear to be elevated by fill.
- The lowest floor and utilities of all the proposed structures should be located a minimum of 2 feet above the natural grade.
- The subdivider is encouraged to purchase flood insurance.

To mitigate impacts on public health and safety, the notifications document filed with the Clerk & Recorder's Office will include a notification of proximity to Skalkaho Creek. (Condition 1)

19. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. *(Condition 2)*
20. There is a prevalence of radon in the County and to mitigate impacts on public health & safety, the covenants shall include a statement regarding radon exposure. *(Condition 2)*
21. The property may be located within the Painted Rocks Dam Inundation Area. The mapping of dam inundation areas is based on extremely rough data and may be off by approximately 0.5 mile in any direction.

To inform future property owners and to mitigate potential impacts of the subdivision on public health and safety, Staff recommends a notification of the dam inundation area be included in the Notifications document filed with the Clerk & Recorder's Office and that the notification include an exhibit showing the probable extent of the inundation area. (Condition 1)

Conclusion of Law:

The mitigating conditions and requirements of final plan approval will address impacts on public health & safety.

VARIANCE REQUEST

The subdivider requested a variance from Section 5-4-5(a) and 5-4-4(h) of the RCSR, to relieve the subdivider from improving Faber's Way to meet County road standards, which include a requirement for a 60-foot wide road easement. The current easement width for Faber's Way is 30 feet and the subdivider does not want to grant an additional 30 feet. The subdivider is proposing to construct a paved parking lot, which will encompass Faber's Way, instead of building a County standard road. The Ravalli County Subdivision Regulations do not have standards pertaining to parking lots.

Variance Review Criteria – Part 1

In reviewing the variance request, Section 7-3-5(a) states the BCC shall first determine the following:

A. Strict compliance with these regulations will result in undue hardship.

Findings of Fact:

1. The subdivider is proposing to pave a parking lot to serve the four units within the Maple Grove Commercial Subdivision for Lease or Rent. The parking lot will meet the County standards for surface, base, and sub base, but will not technically be a road.
2. Faber's Way is a road within a 30-foot wide easement that traverses through the subject property to access the adjacent parcel to the east. Faber's Way will be paved as part of the parking lot.
3. The Ravalli County Subdivision Regulations do not include provisions for parking lots.
4. The subdivider does not provide want to provide an additional 30 feet of easement because he believes that the easement width should be negotiated between him and his neighbor to the east.

Conclusions of Law:

1. The requirement that the subdivider provide for a 60-foot road easement for Faber's Way is not an undue hardship.
2. Because there are no standards in place for parking lots, constructing Faber's Way to be a County standard road within a parking lot is a hardship.

B. Compliance is not essential to the public welfare.

Findings of Fact:

1. The parking lot will meet applicable road standards (surface, base, sub base).
2. The Ravalli County Subdivision Regulations require 60-foot wide easements to provide for future development and road improvements.

To mitigate impacts of granting this variance on the public welfare, the subdivider shall provide for a 60-foot wide easement for Faber's Way along the southern boundary of the property from US Highway 93 to the eastern boundary of the subject property. (Condition 10)

Conclusion of Law:

With the mitigating condition, improving Faber's Way to meet County standards is not essential to the public welfare.

C. Overall Findings and Conclusions on Hardship and Public Welfare

Findings of Fact

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

Conclusion of Law

The variance application provides evidence that there is an undue hardship and that compliance with the RCSR is not essential to the public welfare.

Variance Review Criteria – Part 2

Section 7-3-5(a) states that the BCC shall first determine whether or not there is a hardship or compliance with the RCSR is essential to public welfare. Following this determination, the BCC shall not approve the variance application unless it makes an overall positive finding on the criteria listed below. Staff concluded that the variance application does provide evidence there is an undue hardship and that compliance with the RCSR is not essential to the public welfare. The following criteria were used in making that determination:

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. The subdivider is proposing to pave a parking lot that encompasses Faber's Way. Parking lot plans were submitted and approved by the Ravalli County Road and Bridge Department.
2. In email correspondence dated August 14, 2007 (Exhibit A-8), Ravalli County Road Superintendent David Ohnstad stated: "The design submitted for this project is accepted as meeting the adopted county roadway design standards. While this is not a typical 'roadway', the design incorporates the same design criteria as a roadway. The typical cross section (structural elements) submitted would be substantiated through pavement design (final design), just as with a roadway, and the geometric elements are addressed in the elevation and storm drainage design."
3. The existing 30-foot easement for Faber's Way does not meet the 60-foot easement required by the Ravalli County Subdivision Regulations.
4. The subdivider does not want to provide an additional 30 feet of easement because he believes the easement width should be a result of negotiations between him and the neighbor to the east.

To mitigate impacts of granting the variance on public health and safety, and adjoining properties, the following conditions shall be met prior to final plan approval:

- *Condition 10: The subdivider shall provide for a 60-foot easement for the entire length of Fabers Way as it traverses the property on the final plan and in a separate document filed with the Clerk and Recorder's Office.*
- *Condition 11: The parking lot shall be constructed as proposed in the parking lot plans preliminarily approved by the Ravalli County Road and Bridge Department. The final parking lot plans and actual construction shall be approved by the Ravalli County Road and Bridge Department prior to final plan approval.*

Conclusion of Law:

With the mitigating conditions, the granting of the variance will not be detrimental to public health and safety, general welfare, and/or adjoining properties.

- B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact:

1. Faber's Way currently has a 30-foot wide easement leading to a property to the east.
2. The subdivider is proposing to construct a parking lot encompassing Faber's Way.
3. The Ravalli County Subdivision Regulations do not have standards for parking lots.
4. The subdivider stated in the variance request that "what is considered a road in the Subdivision Regulations will functionally be part of a parking lot/access driveway."

Conclusion of Law:

The conditions appear to be unique.

- C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

The physical conditions of the property do not prevent the granting of a 60-foot road easement or construction of a County standard road.

Conclusion of Law:

The variance request does not meet this criterion.

- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2038). The application complies with Resolution 2038. The zoning regulations in effect do not have any relevance on this variance request.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined in italics below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.4: *Improve and maintain existing infrastructure and public services.*

Countywide Policy 4.5: *Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.*

- To ensure that the subdivider is providing for necessary infrastructure, the parking lot shall be constructed as approved by the Road and Bridge Department, and a 60-foot wide easement for Faber's Way shall be provided. (Conditions 10 and 11)

Countywide Goal 6: *Promote and encourage a vibrant, sustainable, healthy economic environment that recognizes existing businesses and attracts new entrepreneurs.*

Countywide Policy 6.2: *Support and encourage quality design and planning for more aesthetic commercial business development.*

Countywide Policy 6.3: *Support development of business parks.*

- The subdivider is proposing a parking lot and landscaping. The granting of this variance will allow for the parking lot and landscaping plan to be completed.

Conclusions of Law:

1. The subdivision proposal complies with applicable zoning regulations, but the zoning regulations are not relevant to the variance request.
2. With the mitigating conditions, provisions in the Growth Policy support the granting of the variance.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. The portion of the parking lot that is technically considered Faber's Way will be privately-maintained by the property owner until such time as the County elects to assume maintenance responsibilities.
2. Mitigating conditions will prevent impacts of granting the variance on public costs. (Conditions 10 and 11)

Conclusion of Law:

With the recommended conditions, impacts of granting the variance on public costs have been addressed.

Commissioner Rokosch opened public comment.

John Horat from Bitterroot Engineering & Design stated the property was part of a two-lot subdivision in 1998 with a 30-foot easement created. Another access point was later created, so the applicant has abandoned a northern point of access. The access point has a 30-foot easement. Staff recommended a 60-foot easement for Faber's Way, but he thought that the 30-foot easement could be used as a planning tool to restrict further development. He discussed the variance. This is just a parking lot. He stated he is confused why there is a variance needed. They submitted the project in 2004 for initial review. Their preferred choice is to not contribute to the Sheriff's Department because they are proposing a commercial development.

Commissioner Rokosch called for any further public comment.

Bob Pertile stated his only objection is the variance regarding the 60-foot easement. He would request the 60-foot easement be continuous to his property.

Commissioner Grandstaff stated she received a call from adjacent landowner Tom Robinson. Tom expressed his concern about the high groundwater. His basement flooded 4 or 5 years ago. He also has concerns about the road remaining at 60 feet.

Dave Foss stated he would like to see it stay a 60-foot road.

John replied they could live with the 60-foot easement. He said that an elevated sand mound is proposed. There will also be level 2 treatment system. Commissioner Driscoll stated she prefers a level 2 treatment system.

Commissioner Rokosch called for further comment, hearing none, closed public comment. Commissioner Rokosch opened Board deliberation for the variance request.

Commissioner Rokosch reviewed the conditions in the Planning Staff Report. Jen pointed out on the plat map where the 60-foot easement would extend.

Commissioner Rokosch was concerned that parking would be allowed within the road easement for Faber's Way. John offered to stripe the road 20 feet north of the travel surface.

Commissioner Chilcott asked if the parking lot and road paving would be continuous. John replied yes.

Bob Pertile asked if people will be parking in the easement. Ian Northcott replied no one will be parking there. Parking will be in front of the buildings. Brief discussion followed regarding paving of the parking lot and striping.

Commissioner Rokosch stated he has two concerns; one being parking in the easement and two, the access for Sheriff (emergency response vehicles). Further discussion followed regarding the use of the easement. John pointed out a parking plan.

Commissioner Driscoll stated the gravel mound system failed at the nearby Lone Pine Conoco. Is there anything wrong with the ground? John replied no.

Commissioner Chilcott suggested making a no-build zone for the easement. John suggested placing a conditional easement on the strip of land between where the "road" ends and the parcels meet. Commissioner Driscoll stated that this development is close to infrastructure and a 60-foot easement is consistent with what zoning may go toward.

Commissioner Rokosch asked what the Streamside Setback Committee recommended for a setback from Skalkaho Creek. John replied this property is 330 feet from the stream and the current recommendation is a 150-foot setback.

John clarified that the proposed striping would be a white, 4-inch line 20 foot north of the southerly pavement.

Commissioner Rokosch addressed the request from the fire department.

Commissioner Chilcott made a motion to approve the variance request from Section 5-4-5(a) and 5-4-4(h) of the RCSR, to allow the subdivider relief from improving Faber's Way to meet County standards based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report and striping a fog line of 20 feet to the north of the road along the travel way. Commissioner Driscoll seconded the motion, all voted 'aye'.

Commissioner Grandstaff stated she would like her question addressed regarding the failure of the Lone Pine wastewater treatment system. John replied Lone Pine sees a lot of water. Level 3 treatments would be over-designed. Level 2 would suffice. Commissioner Driscoll asked if C-Store is equal to 3 to 4 house usage. John replied the difference is this property will be using 100 gallons a day versus Lone Pine is at 600 gallons a day.

Commissioner Rokosch questioned the monitoring of the water. Ian replied he believes the requirement was to monitor for a year. Commissioner Rokosch expressed his concern with the proximity of Skalkaho Creek.

Commissioner Rokosch stated he would like to see the wells double-cased. The Board has requested in the past the use of double casing wells near water sources. John replied he was not aware of it. Commissioner Rokosch stated it was to provide protection against contaminates.

Commissioner Rokosch questioned the existing covenants. John explained the covenants. Ian stated he is not allowing any mechanics where the oil, gas and junk will be in contact with the ground.

Commissioner Rokosch questioned the 'Commercial Use Only' covenant in the staff report. Jen replied it was directly from the County Attorney's Office.

Commissioner Rokosch questioned the prime agricultural land. The Board is looking at potential mitigation of a \$500 contribution to the Open Lands per unit for pulling farm land permanently out of use. It is a voluntary contribution.

Commissioner Grandstaff stated since there is no school contribution and the land will be permanently taken out of agricultural use, the request is not out of line.

Commissioner Rokosch clarified what they are suggesting is \$2,000 contribution in total for Sheriff's Department and Open Lands. John agreed to the Open Lands contribution and stated his client would agree to the contribution to the Sheriff, but said he did not understand why a commercial development should have to contribute to the Sheriff's Department.

Commissioner Chilcott made a motion to approve Maple Grove Commercial Park subdivision for lease or rent based on the findings of fact and conclusions of law in the Planning Staff Report and subject to the conditions in the Staff Report as amended with a \$500 contribution per new unit to the Opens Lands Program for mitigation for effects on agricultural land and a \$500 contribution per new unit to the Ravalli County Sheriff's Department for effects on local services. Commissioner Grandstaff seconded the motion, all voted 'aye'.

Minutes: Glenda Wiles

In other business, the Board met to decide to assign subdivision proposals (Legacy Ranch, Flat Iron, and Hawks Landing) to the qualified pool of consultants. Present at this meeting was Planning Director Karen Hughes. Karen noted they are looking at the same pool of applicants; WWC and WGM Group. They anticipate more applications being submitted, so this is an issue that needs to move forward. Commissioner Chilcott stated he wants to select these firms today in order to give the planning staff the needed time for zoning issues. Discussion included contract prices & personnel.

Commissioner Rokosch stated he is comfortable using WGM on Hawkes Landing with some negotiation of their contract price, and utilizing WWC with Legacy Ranch. He stated his reasons are that WWC has a handle on the scope and the needed resources. He has major reservations about utilizing private consultants but as part of the settlement conference this is required. He stated these are significant developments and he has some concern with the principles of these developments.

Karen stated Legacy Ranch is partly through the sufficiency review but they are under the new regulations.

Commissioner Chilcott made a motion to have WWC be the consultant for the Flat Iron Subdivision. Commissioner Grandstaff seconded the motion. Discussion of the motion occurred. Commissioner Rokosch asked if the Board wants to have WWC do two of the subdivisions. Commissioner Grandstaff asked how much influence the Board will have in the designs of these subdivisions (i.e., open space, trails, sidewalks etc.) Discussion occurred about ex parte' communication and quasi judicial role in order to become involved in any design standards. Karen stated these design requests should be tied to the review criteria. Commissioner Chilcott called for the question. **Commissioners Driscoll, Grandstaff and Chilcott voted "aye", Commissioner Rokosch voted "nay". In regard to the motion: all voted "aye".**

Commissioner Rokosch made a motion to have WWC be the consultant for Legacy Ranch. Commissioner Grandstaff seconded the motion. Discussion of the motion occurred which included the differences of the consultants and the consultants advocacy for the public interest. **All voted "aye".**

Commissioner Grandstaff made a motion to have WGM be the consultant for Hawkes Landing. Commissioner Chilcott seconded the motion and all voted "aye".

A discussion of how to pay the consultants then occurred. Karen stated there is \$65-69,000 in unspent monies in the consulting fees, and the developers will reimburse the county for the consultants. Karen and the Commissioners will have to review their budgets for other monies available.